

**IDEA Funding**  
under the  
American Recovery and Reinvestment Act



A Guidance Document for Idaho Local Education Agencies

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# IDEA funding under the American Recovery and Reinvestment Act

- ❖ Idaho will receive an additional
  - 53,247,375 in Part B (School Age)
  - 2,268,765 in Pre school
- ❖ These funds are in addition to the regular Part B Grants to States and Preschool Grants that we will receive.
- ❖ All of these ARRA funds for IDEA will go to School Districts and LEAs – there is no additional money for state set-aside.
- ❖ All of these additional monies are being treated as if they are part of the 09-10 allocation, even though half of the ARRA funds may be made available to LEAs as early as May, 2009.
- ❖ All of these funds will be available for obligation until September of 2011.

## Maintenance of Effort

- ❖ Increase in FFY 2009-2010 Part B (not Preschool) funding may allow some LEAs to take advantage of the MOE adjustment allowed by IDEA Regulation 34 CFR 300.205.
- ❖ Regulation says that anytime there is an increase from one year to the next in a LEAs Part B allocation, the LEA can reduce its MOE level (General M&O expenditures for Special Education purposes) by an amount equal to 50% of that increase.
- ❖ LEAs that have a determination level other than “Meets Requirements” may not be able to reduce MOE under IDEA regulations.

*Example of how the Maintenance of Effort reduction works:*

District X received Part B allocation of \$1,000,000 in 2008-09.

District expended \$3,000,000 from the general fund for special education in 2008-09.

2009-10:

District receives

ARRA Part B allocation	\$1,200,000
Regular 09-10 Part B allocation	\$1,100,000
<hr/>	
Total 09-10 allocations	\$2,300,000

Increase of \$1,300,000 over 2008-09

50% of \$1,300,000 = \$650,000

This district may be able to reduce its general fund expenditures for special education in 2009-2010 by \$650,000. Or stated another way, the district could shift \$650,000 in special education costs from general fund to Part B.

*For example:*

- In 08-09 this district paid for 20 special education teachers at an average cost of \$65,000.
- 15 were paid out of general funds, 5 were paid out of Part B.

- In 09-10 the district, if allowed to reduce MOE, could shift the cost for 10 of those teachers from general fund to Part B, thus freeing up \$650,000 in the general fund.
  - The regulation that allows for this MOE reduction further states that funds that are freed up by taking the reduction, may only be used for purposes authorized under the ESEA.

## **Suggested Uses of IDEA Part B and Preschool ARRA funds**

The Part B and Preschool awarded to LEAs under the ARRA are no different than any other IDEA funds. With few exceptions these funds may only be used **“to pay the excess costs of providing special education and related services to children with disabilities...”**  
(34 CFR §300.202 (a)(2)).

The exceptions, under IDEA law and regulations are:

- Up to 15% of a LEA’s total Part B and Preschool allocation may be used for Coordinated Early Intervening Services under 34 CFR §300.226.  
\*LEAs that use funds for Early Intervening Services will not be eligible to utilize the MOE reduction outlined above.
- An amount of Part B funds that is proportionate to the number of children with disabilities served in Schoolwide programs under Title I may be used to support those Schoolwide programs under 34 CFR §300.206.

### **Possible One-Time Expenditures at the District Level**

- Assistive technology devices and training in their use
- Professional development of both special education and general education personnel focused on improving outcomes for students with disabilities
- Collection and use of data to improve teaching and learning
- Expanded ability of public and private preschool programs to serve children with disabilities
- Updated equipment and technology
- Workshops and education for parents of students with disabilities
- Work with employers in the community to develop job placements for youth with disabilities
- Support for students with disabilities in extended day intervention programs
- Identification of and training of ‘master teachers’
- Mentor programs for new special education teachers
- District wide implementation of Response to Intervention and Positive Behavior Supports.

*All of these activities are allowable under IDEA and could be sustained using traditional allocation.*

### **State Activities that are in place and Support both Current and ARRA Funding:**

- Regional Special Education Coordinators (7 across the state)
- Idaho Training Clearinghouse provides online resources and training statewide
- New parent involvement planning and resource program
- Partnership with Idaho Building Capacity Project to support administrators in implementing IDEA
- Monthly web based training opportunities based on the Nine Characteristics of High Performing Schools
- Statewide projects in Assistive Technology, Autism and Positive Behavior Support provide evaluation of students and training to district personnel
- Special Education Teacher Mentor programs for secondary transition, early childhood special education, and new special education teachers.



**AMERICAN RECOVERY AND REINVESTMENT FUNDS  
STRENGTHENING IDAHO SCHOOLS TO ENSURE QUALITY EDUCATION**

*Success Depends on Leadership, Judgment, Coordination and Communication*  
U.S. DEPARTMENT OF EDUCATION

Goal	College and Career Ready	Data Driven Programs and Processes	Teacher Effectiveness and Equitable Distribution of Highly Qualified Teachers	Intensive Support and Effective Interventions
<b>IDEA Part B Funds</b> <b>Part B School Age</b> <b>51,586,694</b> <b>Part B Preschool</b> <b>(3-5 years)</b> <b>\$2,152,054</b>	<p>Increased assistive technology devices</p> <p>Creation of a secondary transition coach position in high school</p> <p>Workshops and education for parents of students with disabilities</p> <p>Establishment of a system to work with employers in the community to develop job placements for youth with disabilities</p> <p>Support for students with disabilities in extended day intervention programs</p> <p>Purchase of curricular materials in all content areas for students with significant cognitive disabilities</p>	<p>Technical assistance in the collection and use of data to improve the identification of students with disabilities</p> <p>Implementation (and related professional development required) of diagnostic and progress monitoring assessments</p> <p>Creation of data teams to examine ELL students and possibility of learning disabilities</p> <p>Commitment to have special education staff participate in the development and scoring of the Idaho Alternate Assessment</p> <p>Implementation (and necessary training) of the WISE tool for School and District Improvement Planning</p>	<p>Saving or creating positions that serve students with disabilities</p> <p>Mentor programs for new special education teachers</p> <p>Professional development of both special education and general education personnel focused on improving outcomes for students with disabilities</p> <p>Participation in online courses offered through the SDE and IDLA in areas related to students with special needs</p> <p>Identification and training of master teachers</p> <p>Training in the implementation of increased assistive technology devices</p>	<p>Participation in the SDE Sponsored RTI Conference (April 2010)</p> <p>Implementation of early childhood screenings for language development, literacy, and numeracy at kindergarten registration</p> <p>Early intervention services (increased intensity of instruction in primary grades)</p> <p>Expand the ability of public and private preschool programs to serve children with disabilities</p> <p>Implementation of the Response-to-Intervention Model</p> <p>Implementation of the Positive Behavior Support Model</p>

## Maintenance of Effort Guidance

### Maintenance of Effort Adjustments

With the significantly increased one-time funding added to LEA allocations in 2009-2010 by the American Recovery and Investment Act (ARRA), LEAs have been able to take advantage of the option for MOE reduction provided in §300.205 of the regulations.

#### **300.205 Adjustment to local fiscal efforts in certain fiscal years.**

- (a) Amounts in excess. Notwithstanding 300.202(a)(2) and (b) and 300.203(a), and except as provided in paragraph (d) of this section and 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by 300.203(a) by not more than 50 percent of the amount of that excess.
- (b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.
- (c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.
- (d) Special rule. The amount of funds expended by an LEA for early intervening services under 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

This regulation says that anytime a LEA's allocation of Part B funds increases over the previous year's allocation, that LEA can reduce its general fund special education expenditures by an amount equal to 50% of the increase. The 2009-10 allocation, with its significant increase in Part B funding due to the ARRA funds, is the first time that LEAs have been able to utilize this provision in any significant way. Unlike the exceptions to MOE outlined in §300.204 where the reduction results in a change in level or amount of service, this adjustment results in a shifting of costs from state general fund revenues to federal IDEA Part B funds.

*Here is an example of how this works:*

- District A received an allocation of \$1,000,000 in Part B funds in 2008-2009.
- In 2009-2010 District A received a regular allocation of \$1,000,000 plus an ARRA allocation of \$1,100,000 for a total of \$2,100,000 or an increase of \$1,100,000.
- 50% of \$1,100,000 is \$550,000 – the amount by which District A can reduce its 2009-10 general fund expenditures for special education.

*What this means for District A:*

Let's say that in 2008-2009 District A's General Fund special education expenditures looked like this:

Fund 100		
521	Exceptional Child Program	\$ 1,500,000.00
522	Preschool Exceptional Child	\$ 700,000.00
616	Special Services Program	\$ 800,000.00
	Total M & O	\$ 3,000,000.00
	Child Count 12/1/08	750
	Per Pupil Average	\$ 4,000.00

The district is able, under §300.205, to reduce the amount above by \$550,000 or down to \$2,450,000 total expenditures.

*How does a LEA reduce MOE under §300.205?*

Since IDEA Part B funds (including those received under the ARRA) can only be used to pay for the *excess costs of providing special education and related services to children with disabilities* (374 CFR §300.202), how a LEA accomplishes this reduction and accounts for it is critical. In the example above, District A paid, in 2008-2009, primarily for special education teachers and aides out of fund 100 – 521, at an average cost of \$55,000. To reduce MOE by the full \$550,000 of the allowable adjustment, the district could, in 2009-10, shift the cost of 10 teachers/aides from the general fund to Part B and still maintain the same level of special education services.

It is important to note that any MOE reduction under section 300.205 can only occur in the 2009-10 year, since that is the year in which the allocation is awarded. Even if a LEA carries over a substantial portion of the 09-10 allocation, those funds cannot be used to reduce MOE.

*For example:*

District B received an allocation of \$600,000 in Part B funds in 2008-2009.

- In 2009-2010 District B received a regular allocation of \$600,000 plus an ARRA allocation of \$650,000 for a total of \$1,250,000 or an increase of \$650,000.
- 50% of \$650,000 is \$325,000 – the amount by which District B can reduce its 2009-10 general fund expenditures for special education.

*What this means for District B:*

Let's say that in 2008-2009 District B's General Fund special education expenditures looked like this:

Fund 100		
521	Exceptional Child Program	\$ 800,000.00
522	Preschool Exceptional Child	\$ 200,000.00
616	Special Services Program	\$ 500,000.00
	Total M & O	\$ 1,500,000.00
	Child Count 12/1/08	400
	Per Pupil Average	\$ 3,750.00

- District B does not reduce its MOE under §300.205 in 2009-10, spending an amount approximately equal to the 08-09 general fund expenditures above.



- District B only expends \$650,000 of its 2009-10 allocation, carrying over \$600,000 to 2010-11.
- Due to state budget cuts in FY2011 District B wants to shift some costs from fund 100 to IDEA Part B.
- Even though the District has 2009-10 carryover funds available that would enable it to make this reduction, it is not allowed to reduce in 2010-11 because that is not the fiscal year in which the allocation is received.

*Note:*

§300.205(b) states that a LEA that takes advantage of this provision must “*use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.*” This section of the regulation makes the assumption that by shifting costs from the general fund to Part B funds, there will be freed-up funds available to the LEA. Districts and LEAs that have reduced MOE under §300.205 will be required to track how an amount equal to the reduction is expended in accordance with this regulation and may be required to report that information to the SDE. A summary of the provisions of the ESEA is included as Appendix C to assist in determining what activities could be supported with funds under ESEA.

## ARRA Fund FAQs

TO: IASEA Conference Committee

FROM: Cliff Hart, Regional III Representative

RE: Discussion Topics for the ARRA Round Table

DATE: May 8, 2009

A small group of Southeast Special Education Directors met in Blackfoot on May 8 to discuss how the American Recovery and Reinvestment Act (ARRA) will impact special education and early intervention at the district level. Listed below are questions of concern in regards to the stimulus funding:

### Maintenance of Effort (MOE):

1. How would utilizing ARRA funding impact Local Educational Agency's (LEA) maintenance of effort after two years?

If a district utilizes the option to reduce MOE by 50% of the increase in 09-10, the MOE bar is reset to the lower level. After 09-10 the district is only required to meet that new level until it chooses to increase M&O expenditures for sped.

- a. Would a LEA be held accountable to maintain funding for Special Education funding within their M & O under maintenance of effort?

The only requirement that the LEA is accountable for is to maintain the 09-10 level of M&O expenditures in 10-11 and meet at least that level, less any other allowable reduction, in subsequent years.

- b. Is using any part of the ARRA funding to lower a LEA's maintenance of effort a sound budgetary decision? What are the pro's and con's in making such a budgetary decision?

The answer depends on each LEA's situation. I have had districts tell me that they need to lower their M&O expenditure level but have not had the opportunity until now because they would have found themselves in a MOE failure situation. Other LEAs say their M&O expenditure level is as low as they can go and still maintain appropriate levels of service. Other special education departments are concerned about the future implications of reducing M&O now – afraid that they may not be able to get it back in the absence of funding increases.

- c. What other provisions would allow an LEA to reduce maintenance of effort?

The same allowances still apply to reduction of MOE: 1) Voluntary departure of special education personnel; 2) LEA is no longer required to provide high cost services to a

particular student; 3) One-time capital outlay no longer required; 4) Reduction in numbers of special education students.

2. In what circumstance is a LEA required to use 15% of its IDEA Part B allocation on early intervention services?

If it is determined that there is a significant disproportionality in the identification of disability based on race and ethnicity, the LEA would be required to set aside 15% of Part B funds for CEIS.

- a. How would this impact their ability to reduce Maintenance of Effort under IDEA?

LEAs required to set aside CEIS due to disproportionality in a particular year would not be able to use the 50% MOE flexibility. In general, a LEA in this situation would still be able to reduce MOE under the other exceptions listed above.

#### Utilization of ARRA funds:

1. What are allowable and non-allowable uses of the ARRA funds?

IDEA funds provided to LEAs under the ARRA are exactly the same as all IDEA Part B and Preschool funds. They may only be used, with the same exceptions as always, to “pay the excess costs of providing special education and related services to children with disabilities.” There are no additional restrictions on use or additional allowable uses.

2. What are the governing regulations in the spending of ARRA funding allocation?

The same regulations that have always governed the uses of IDEA Part B and Preschool funds – 34 CFR Part 300.

3. What is the best practice in formulating a budgetary plan in using the ARRA funding?

Any budgetary plan must be formulated on specific district needs and circumstances.

However, several things that I would recommend considering in the process:

- ✓ Where is the district right now with MOE? Can MOE be reduced without future budget implications?
- ✓ If the district want and needs to reduce MOE, is it possible make adjustments in the current year and keep a lower threshold (07-08).
- ✓ Look at the long term impact of these additional funds. Like all Part B funds, they last for 2 years, so, because the district will receive additional funds in 10-11 that overlap with these funds, is may be possible to spread the impact out over more than 2 years.
- ✓ Don't count on significantly increased levels of Part B funding in future years. It may happen but it may not.
- ✓ Consider all of the ways in which these funds may improve your district's special education program, how these improvements will be sustainable – not just reductions to MOE.

4. Discuss how ARRA funds interact with parentally-placed private school students.

Because the ARRA funds are considered part of the district's 09-10 allocation, a proportionate share of the total allocation, including these funds, must be set aside for PPPSS in 09-10. Any amounts that are unspent in 09-10 can and must be carried over to the following year for PPPSS. The same is true of Preschool funds for 3-5 year old PPPSS.

# U.S. Department of Education Guidance

## *Fact Sheet*

### **American Reinvestment Act of 2009: IDEA Recovery Funds for Services to Children and Youths with Disabilities**

April 1, 2009

The American Recovery and Reinvestment Act of 2009 (ARRA) appropriates significant new funding for programs under Parts B and C of the Individuals with Disabilities Education Act (IDEA). Part B of the IDEA provides funds to state educational agencies (SEAs) and local educational agencies (LEAs) to help them ensure that children with disabilities, including children aged three through five, have access to a free appropriate public education to meet each child's unique needs and prepare him or her for further education, employment, and independent living. Part C of the IDEA provides funds to each state lead agency designated by the Governor to implement statewide systems of coordinated, comprehensive, multidisciplinary interagency programs and make early intervention services available to infants and toddlers with disabilities and their families.



The IDEA funds under ARRA will provide an unprecedented opportunity for states, LEAs, and early intervention service providers to implement innovative strategies to improve outcomes for infants, toddlers, children, and youths with disabilities while stimulating the economy. Under the ARRA, the IDEA funds are provided under three authorities: \$11.3 billion is available under Part B Grants to States; \$400 million is available under Part B Preschool Grants; and \$500 million is available under Part C Grants for Infants and Families. Preliminary information about each state's allocation is available at: <http://www.ed.gov/about/overview/budget/statetables/index.html>. This Web site also provides information about the State Fiscal Stabilization Fund (SFSF) under the ARRA, which is separate from the IDEA ARRA funds described in this fact sheet. This document focuses on Part B; additional information on Part C is available at <http://www.ed.gov/policy/gen/leg/recovery/factsheet/idea.html>.

IDEA, Part B ARRA funds are a key element of the ARRA principles as described below:

#### **Overview of ARRA**

**Principles:** The overall goals of the ARRA are to stimulate the economy in the short term and invest in education and other essential public services to ensure the long-term economic health of our nation. The success of the education part of the ARRA will depend on the shared commitment and responsibility of students, parents, teachers, principals, superintendents, education boards, college presidents, state school chiefs, governors, local officials, and federal officials. Collectively, we must advance ARRA's short-term economic goals by investing quickly, and we must support ARRA's long-term economic goals by investing wisely, using these funds to strengthen education, drive reforms, and improve results for students from early learning through college. Four principles guide the distribution and use of ARRA funds:

- a. **Spend funds quickly to save and create jobs.** ARRA funds will be distributed quickly to states

and other entities in order to avert layoffs and create jobs. States in turn are urged to move rapidly to develop plans for using funds, consistent with ARRA's reporting and accountability requirements, and to promptly begin spending funds to help drive the nation's economic recovery.

- b. **Improve student achievement through school improvement and reform.** ARRA funds should be used to improve student achievement and help close the achievement gap. In addition, the SFSE requires progress on four reforms previously authorized under the bipartisan Elementary and Secondary Education Act of 1965, as amended, and the America Competes Act of 2007:
  - 1. Making progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including English language learners and students with disabilities;
  - 2. Establishing pre-K to college and career data systems that track progress and foster continuous improvement;
  - 3. Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need;
  - 4. Providing intensive support and effective interventions for the lowest-performing schools.
- c. **Ensure transparency, reporting and accountability.** To prevent fraud and abuse, support the most effective uses of ARRA funds, and accurately measure and track results, recipients must publicly report on how funds are used. Due to the unprecedented scope and importance of this investment, ARRA funds are subject to additional and more rigorous reporting requirements than normally apply to grant recipients.
- d. **Invest one-time ARRA funds thoughtfully to minimize the "funding cliff."** ARRA represents a historic infusion of funds that is expected to be temporary. Depending on the program, these funds are available for only two to three years. These funds should be invested in ways that do not result in unsustainable continuing commitments after the funding expires.

#### Awarding IDEA Part B Grants to States and Preschool Grants ARRA Funds

The Department of Education awarded 50 percent of the IDEA, Part B Grants to States and Preschool Grants ARRA funds to SEAs on April 1, 2009. The other 50 percent will be awarded by September 30, 2009. These awards will be in addition to the regular Fiscal Year (FY) 2009 Part B Grants to States and Preschool Grants awards that will be made on July 1, 2009 (Grants to States and Preschool Grants) and October 1, 2009 (Grants to States only). Together, these grant awards will constitute a state's total FY 2009 Part B Grants to States and Preschool Grants allocations.

- A state did not need to submit a new application to receive the first 50 percent of the Part B Grants to States and Preschool Grants ARRA funds because these funds were made available to each state based on the state's eligibility established for FY 2008 Part B funds and the provision of the certification required by section 1607 of the ARRA. The assurances in the state's FY 2008 application, as well as the requirements of the ARRA, apply to these ARRA funds. In order to receive the remaining 50 percent of IDEA, Part B ARRA funds, a state must submit, for review and approval by the Department, additional information that addresses how the state will meet the accountability and reporting requirements in section 1512 of the ARRA.
- The additional IDEA funds provided under the ARRA do not increase the amount a state would otherwise be able to reserve for state administration or other state-level activities under its regular grants to states FY 2009 award.

- LEA eligibility for the first 50 percent of the IDEA ARRA funds is based on eligibility established by the LEA for FY 2008 funds.
- In accordance with the goals of the ARRA, a state should obligate IDEA ARRA funds to LEAs expeditiously, but prudently. A state should make the Part B Grants to States and Preschool Grants ARRA funds that it receives in March available to LEAs by the end of April 2009.
- Similarly, an LEA should use the IDEA ARRA funds expeditiously, but prudently. An LEA should obligate the majority of these funds during school years 2008-09 and 2009-10 and the remainder during school year 2010-11. States may begin obligating IDEA, Part B ARRA funds immediately upon the effective date of the grant. All IDEA ARRA funds must be obligated by September 30, 2011.

### **Uses of IDEA, Part B ARRA Funds**

All IDEA ARRA funds must be used consistent with the current IDEA, Part B statutory and regulatory requirements and applicable requirements in the General Education Provisions Act (GEPA) and the Education Department General Administrative Regulations (EDGAR). An LEA must use IDEA ARRA funds only for the excess costs of providing special education and related services to children with disabilities, except where IDEA specifically provides otherwise.

- The IDEA ARRA funds constitute a large one-time increment in IDEA, Part B funding that offers states and LEAs a unique opportunity to improve teaching and learning and results for children with disabilities. Generally, funds should be used for short-term investments that have the potential for long-term benefits, rather than for expenditures the LEAs may not be able to sustain once the ARRA funds are expended. Some possible uses of these limited-term IDEA ARRA funds that are allowable under IDEA and aligned with the core reform goals for which states must provide assurances under SFSF include:
  - Obtain state-of-the art assistive technology devices and provide training in their use to enhance access to the general curriculum for students with disabilities.
  - Provide intensive district-wide professional development for special education and regular education teachers that focuses on scaling-up, through replication, proven and innovative evidence-based school-wide strategies in reading, math, writing and science, and positive behavioral supports to improve outcomes for students with disabilities.
  - Develop or expand the capacity to collect and use data to improve teaching and learning.
  - Expand the availability and range of inclusive placement options for preschoolers with disabilities by developing the capacity of public and private preschool programs to serve these children.
  - Hire transition coordinators to work with employers in the community to develop job placements for youths with disabilities.

### **Invitation for Waivers**

The Secretary intends to issue regulations to allow reasonable adjustments to the limitation on state administration expenditures to help states defray the costs of ARRA data collection requirements.

### **IDEA, Part B Fiscal Issues**

- An LEA may be able to reduce the level of state and local expenditures otherwise required by the IDEA LEA maintenance of effort (MOE) requirements. Generally, under section 613(a)(2)(C), in any fiscal year that an LEA's IDEA allocation exceeds the amount the LEA received in the previous year, under certain circumstances, the LEA may reduce the level of

state and local expenditures by up to 50 percent of the amount of the increase, as long as the LEA uses those freed-up local funds for activities that could be supported under the ESEA, such as services for children at risk of school failure without additional support. If an LEA takes advantage of this provision, the required MOE for future years is reduced consistent with the reduction it took, unless the LEA increases the amount of its state and local expenditures on its own. SEAs should encourage LEAs that can and do take advantage of this flexibility to focus the freed-up local funds on one-time expenditures that will help the state make progress on the goals in the SFSF program, such as improving the equitable distribution of effective teachers and the quality and use of assessments to enhance instruction for students most in need.

- Alternatively, an LEA may (or in some cases must) use up to 15 percent of its total IDEA, Part B Grants to States and Preschool Grants for early intervening services for children in grades K through 12 who are not currently identified as children with disabilities, but who need additional academic and behavioral support to succeed in a general education environment. However, an LEA may use only up to 15 percent of its allocation minus any amount (on a dollar-for-dollar basis) by which the LEA reduced its required state and local expenditures under section 613(a)(2)(C).
- State-level MOE may be waived under Part B of the IDEA by the Secretary of Education on a state-by-state basis, for a single year at a time, for exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of a state. LEA-level MOE may not be waived.
- With prior approval from the Secretary of Education, a state or LEA may count SFSF (but not IDEA ARRA funds) under the ARRA that are used for special education and related services as non-federal funds for purposes of determining whether the state or LEA has met the IDEA, Part B MOE requirements. (See separate fact sheet on SFSF for more information.)

### **Accountability Principles**

As with all federal funds, states and LEAs are responsible for ensuring that the IDEA, Part B ARRA funds are used prudently and in accordance with the law.

- ARRA requires that recipients of funds made available under that act separately account for, and report on, how those funds are spent.
- The President and the Secretary are committed to ensuring that ARRA dollars are spent with an unprecedented level of transparency and accountability. The administration will post reports on ARRA expenditures on the [Recovery.gov](http://Recovery.gov) Web site.

### **Additional Information**

- The Department will provide updates as additional information becomes available regarding the details of the IDEA ARRA funds.
- The Department will also provide further information on the government-wide data collection and reporting requirements as this information becomes available.
- If you have any questions or concerns, please email them to [DEARRecoveryComments@ed.gov](mailto:DEARRecoveryComments@ed.gov).

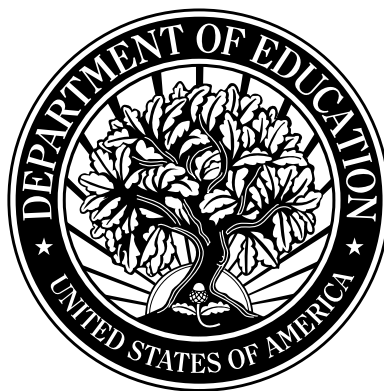


*Guidance*

**Funds for Part B of the  
Individuals with Disabilities Education Act**

**Made Available Under**

**The American Recovery and Reinvestment Act of 2009**



April, 2009

Revised April 13, 2009

Revised July 1, 2009

Revised September 9, 2010

U.S. Department of Education

Office of Special Education and Rehabilitative Services

### **Purpose of the Guidance**

The purpose of this guidance is to provide information related to Part B of the Individuals with Disabilities Education Act funds made available under the American Recovery and Reinvestment Act of 2009. The guidance provides the U.S. Department of Education's interpretation of various statutory provisions and does not impose any requirements beyond those included in the American Recovery and Reinvestment Act of 2009 and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

The Department will provide additional or updated program guidance as necessary. If you are interested in commenting on this guidance, please send your comments to [IDEARecoveryComments@ed.gov](mailto:IDEARecoveryComments@ed.gov).

**Funds for Part B of the  
Individuals with Disabilities Education Act  
Made Available Under  
The American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5)**

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## Introduction

The American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) appropriates significant new funding for programs under Parts B and C of the Individuals with Disabilities Education Act (IDEA). Part B of the IDEA provides funds to state educational agencies (SEAs) and through them to local educational agencies (LEAs) to help them ensure that children with disabilities, including children aged three through five, have access to a free appropriate public education to meet each child's unique needs and prepare each child for further education, employment, and independent living. Part C of the IDEA provides funds through the Grants for Infants and Families program to each state lead agency designated by the Governor to implement statewide systems of coordinated, comprehensive, multidisciplinary interagency programs and make early intervention services available through early intervention service (EIS) programs to infants and toddlers with disabilities and their families.

The IDEA ARRA funds will provide an unprecedented opportunity for states, LEAs, and EIS programs to implement innovative strategies to improve outcomes for infants, toddlers, children, and youth with disabilities while stimulating the economy. Under the ARRA, the IDEA Part B ARRA funds are provided under three authorities: \$11.3 billion is available under Part B Grants to States; \$400 million is available under Part B Preschool Grants; and \$500 million is available under Part C Grants for Infants and Families. Preliminary information about each state's allocation is available at: <http://www.ed.gov/about/overview/budget/statetables/recovery.html>.

This document provides guidance related to the Part B IDEA ARRA funds; separate documents provide guidance related to Part C IDEA ARRA funds at <http://www.ed.gov/policy/gen/leg/recovery/guidance/idea-c.pdf> and State Fiscal Stabilization Funds under the ARRA at <http://www.ed.gov/programs/statestabilization/guidance.pdf>.

## **A. Timing and Eligibility**

### **A-1. How and when will IDEA Part B ARRA funds be allocated by the Department of Education (Department) to state educational agencies (SEAs)?**

The Department awarded 50 percent of the IDEA, Part B Grants to States and Preschool Grants ARRA funds to SEAs on April 1, 2009. The other 50 percent will be awarded by September 30, 2009, after each state submits, for review and approval by the Department, additional information that addresses how the States will meet the accountability and reporting requirements in section 1512 of the ARRA. These awards will be in addition to the regular fiscal year (FY) 2009 Part B awards that will be made on July 1, 2009 (Grants to States and Preschool Grants) and October 1, 2009 (Grants to States only). Together, these grant awards will constitute a state's total FY 2009 Part B Grants to States and Preschool Grants allocations.

### **A-2. What must an SEA do to receive IDEA Part B ARRA funds?**

A state did not need to submit a new application to receive the first 50 percent of the IDEA Part B Grants to States and Preschool Grants ARRA funds because these funds were made available to each state based on the state's eligibility established for FY 2008 Part B funds and its provision of the certification required by section 1607 of the ARRA. The assurances in the state's FY 2008 application, as well as the requirements of the ARRA, apply to these ARRA funds. In order to receive the remaining funds, each state will need to submit, for review and approval by the Department, additional information that addresses how the state will meet the accountability and reporting requirements in section 1512 of the ARRA. The second half of the awards will be made by September 30, 2009 upon approval of the state's recordkeeping and reporting submission. The Department will issue specific guidance for preparing and submitting this recordkeeping and reporting information and other guidance governing ARRA funds in the coming weeks.

### **A-3. How and when are the IDEA Part B ARRA funds for the Grants to States and Preschool Grants programs to be allocated by the SEAs to the LEAs?**

The Department awarded 50 percent of the IDEA Part B ARRA funds on April 1, 2009, and will award the regular Grants to States and Preschool Grants for FY 2009 funds on July 1, 2009, the rest of the regular FY 2009 Grants to States funds on October 1, 2009, and the rest of the ARRA funds by September 30, 2009. However, because the formula for making allocations to LEAs under the IDEA was designed to allocate one lump sum per fiscal year, the LEA allocations, for both Grants to States and Preschool Grants, must be calculated using the sum of IDEA Part B ARRA funds and the regular IDEA FY 2009 allocation for each of these programs. By calculating LEA allocations on the basis of both IDEA Part B ARRA funds and IDEA regular FY 2009 state allocations, it is possible to get the total allocation for each LEA for each program, which then must be divided into "ARRA" and "regular" amounts for the LEA allocations. States and LEAs must know the amount of regular and ARRA funds in order to account separately for how those funds are spent. To receive these amounts, states must do the following:

Step 1: Make its set-aside decisions, under sections 611(e) and 619(d) of the IDEA, for administrative and other state-level activities. (The impact of IDEA Part B ARRA funds on the amount that may be set-aside is addressed in question B-1.) A state must determine whether the set-asides will be deducted from the IDEA regular or ARRA allocations. For ease of recordkeeping, we advise states to reserve the set-aside amounts from the IDEA regular allocation. (States that choose to set aside any amount for state-level activities from its ARRA allocation cannot use the steps described here to determine LEA allocations.)

Step 2: Deduct the amount of the reserved funds from that state's FY 2009 regular IDEA allocations.

Step 3: Determine the total allocation level for each of its LEAs by calculating allocations based on the sum of available FY 2009 IDEA Part B ARRA funds and regular allocations.

Step 4: Determine each LEA's regular allocation by calculating allocations based ONLY on the FY 2009 IDEA regular state allocation amount (after set-asides are subtracted). Each LEA's ARRA allocation is then the difference between the total allocation and the regular allocation.

**A-4.** May an LEA refuse to accept IDEA funds, including ARRA funds, and if so, does the state reallocate the funds to other LEAs?

An LEA may refuse to accept IDEA, Part B funds, but what the state may do with those funds will depend on the specific circumstances.

- a. If an LEA refuses to accept IDEA funds, and the SEA determines that the children in that LEA are not receiving a free, appropriate public education (FAPE), then the SEA must use funds that would have gone to the LEA to provide special education and related services directly to children with disabilities in the jurisdiction of that LEA. 34 CFR §300.227.
- b. If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that LEA with state and local funds, the SEA may either reallocate those funds to other LEAs that are not adequately providing special education and related services to all children with disabilities within their jurisdictions, or the SEA may retain those funds for use at the state level to the extent that the state has not reserved the maximum amount of funds it is permitted to retain for state-level activities. 34 CFR §§300.705(c) and 300.817, 73 Fed. Reg. 73006, 73028-9 (December 1, 2008).
- c. The SEA also may use those funds to develop and implement a state policy to provide early intervention jointly with the lead agency under Part C of IDEA. Any SEAs implementing such a policy should note that the early intervention services must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills, in accordance with Part C to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C until the children enter, or are eligible under state law to enter, kindergarten, or elementary school as appropriate. 34 CFR §300.704(f).

**A-5.** What is the period of availability for the IDEA Part B ARRA funds?



States and LEAs must obligate all IDEA Part B ARRA funds by September 30, 2011. A chart indicating when an obligation occurs for various types of activities is provided in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.707. In accordance with the goals of the ARRA, a state should obligate IDEA Part B ARRA funds to LEAs as soon as possible, consistent with prudent management, so that LEAs can begin using the funds. Similarly, an LEA should use the IDEA Part B ARRA funds expeditiously, but sensibly. States may begin obligating IDEA Part B ARRA funds immediately. Costs are allowable beginning February 17, 2009, the effective date of the grants.

## **B. Set-Asides and Indirect Costs**

- B-1.** What is the impact of the IDEA Part B ARRA funds on the amount(s) that an SEA may set aside under IDEA sections 611(e) and 619(d)?

The additional IDEA Part B ARRA funds do not increase the amount a state would otherwise be able to reserve under IDEA section 611(e) for state administration or other state-level activities under its regular FY 2009 award for Part B Grants to States. However, the additional IDEA Part B ARRA funds do result in an increase in the amount a state would otherwise be able to reserve for state administration and other state-level activities under IDEA section 619(d) for Part B Preschool Grants.

- B-2.** Will an updated Excel Interactive (Use of Funds) spreadsheet be available to SEAs for FY 2009?

Yes. The Department will provide an FY 2009 Excel Interactive (Use of Funds) spreadsheet that includes maximums and minimums for state-level administration and other state-level activities under the Part B Grants to States program.

- B-3.** May LEAs set aside up to 15 percent of their IDEA Part B ARRA funds for coordinated early intervening services (CEIS) under IDEA section 613(f)?

Yes. See D-2.

- B-4.** Will LEAs with significant disproportionality based on race and ethnicity be required to set aside 15 percent of the IDEA Part B ARRA funds plus the IDEA regular FY 2009 funds for comprehensive CEIS under IDEA section 618(d)?

Yes. States are required to collect and examine data to determine if LEAs have significant disproportionality based on race and ethnicity in the identification of children as children with disabilities, the identification of children with specific impairments, the placement in particular education settings, and the incidence, duration, and type of disciplinary actions. States must require an LEA with significant disproportionality to utilize 15 percent of the LEA's total amount of IDEA Part B funds for comprehensive CEIS. The 15 percent is calculated based on the aggregate of the Grants to States and Preschool Grants amounts for both the regular IDEA awards and the IDEA ARRA awards. (See OSEP Memo 07-09, April 24, 2007 and OSEP Memo 08-09, July 28, 2008 for further information on funds for CEIS when significant disproportionality exists at <http://www.ed.gov/policy/speced/guid/idea/letters/2007-2/index.html>).

LEAs that are required to use the full 15 percent for CEIS will not be able to take advantage of any of the flexibility for local MOE reduction that would otherwise be available under IDEA section 613(a)(2)(C).

- B-5.** How do IDEA Part B ARRA funds apply to a state's high cost fund (or risk pool in section 611(e)(2)(A) of the Act, and described in 34 CFR §300.704(c))?

The availability of IDEA Part B ARRA funds does not affect a state's high cost fund. The maximum amounts for administration and for other state-level activities are increased by inflation in each fiscal year in accordance with section 611(e)(2)(A) of IDEA.

States choosing to use 10 percent of the funds reserved for state-level activities (not including administration) for an LEA risk pool, as described in IDEA section 611(e)(3), will have a maximum set aside level for non-administrative state-level activities of 10 percent or 10.5 percent of their FY 2006 allocation, increased by inflation, depending on the amount reserved for administration.

- B-6.** Do restricted indirect cost rates apply to the IDEA Part B ARRA funds?

Yes. States should calculate their restricted indirect costs on the IDEA Part B ARRA funds in the same way as they calculate indirect costs on their IDEA regular grant award.

- B-7.** How might the ARRA funding affect indirect cost recoveries by grantees?

In order to obtain indirect cost recoveries, grantees are allowed to apply their currently negotiated indirect cost rate to expenditures incurred under the ARRA. The negotiated indirect cost rate for the current fiscal year is based on actual cost information from a prior fiscal year. Therefore, applying the currently negotiated indirect cost rate to the increased funding under ARRA (which was not considered in the rate calculation) could result in an over-recovery of indirect costs in the current period. Such an over-recovery will be adjusted in a future fiscal year, thereby reducing indirect cost recoveries during that future period. In order to avoid a future compounding effect of less program dollars and reduced indirect costs, we recommend grantees closely monitor the potential impact of the ARRA on their indirect cost recoveries and consider making appropriate adjustments during the current periods. Such adjustments will lessen the dollar impact in future years and allow for stability in future budgets. Adjustments to indirect cost recoveries should first be discussed with the cognizant Federal agency.

## **C. Waivers**

- C-1.** Does the ARRA provide any additional authority for the Secretary to grant waivers for state and local maintenance of effort (MOE) and supplement not supplant requirements under IDEA?

No. The Secretary does not have any additional authority, beyond the authority that already exists in IDEA section 612(a)(17)(C) and (18), to grant waivers for state or local MOE and supplement not supplant requirements under IDEA.

- C-2.** Under what circumstances can the Secretary waive the state-level supplement not supplant requirements?

Under IDEA section 612(a)(17)(C), the Secretary has authority to grant a waiver of the state-level supplement not supplant requirement if the state provides clear and convincing evidence that all children with disabilities in the state have FAPE available. The standards for applying for this waiver are spelled out in 34 CFR §300.164.

- C-3.** Under what circumstances can the Secretary waive the state-level MOE requirements?

Under IDEA section 612(a)(18) the Secretary has authority to grant waivers for the MOE requirement that applies to states under the Grants to States program. However, the Secretary may only grant waivers to individual states, for one fiscal year at a time, after determining that granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the state, or the state otherwise meets the standard in IDEA section 612(a)(17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the IDEA. The state's level of effort in future years reverts to the level that would have been required in the absence of a waiver.

- C-4.** What must states do to obtain a waiver under IDEA, section 612(a)(18)?

If a state determines that it will not be able to satisfy the Grants to States state-level MOE requirement, and wants to request a waiver or modification, it must submit a written request and supporting documentation justifying the request to the Secretary. The request should specify the amount of required non-Federal expenditures that the state wishes to have waived or modified.

The state should submit the waiver or modification request as soon as it determines that it does not expect to be able to meet the MOE requirement. States that are considering submitting a waiver application under IDEA, section 612(a)(18) are encouraged to review previous guidance developed by the Secretary for the purpose of granting waivers (using a similar statutory standard) to State Vocational Rehabilitation Agencies at: <http://www.ed.gov/policy/special/guid/rva/tac-02-02.doc>

- C-5.** What authority does the Secretary have to grant waivers of MOE to LEAs?

Although the Secretary does not have any additional authority to grant waivers to LEAs, LEAs may be eligible to reduce the total state and local expenditures otherwise required by the LEA MOE provisions of IDEA using the flexible authority contained in IDEA, section 613(a)(2)(C). For more information on the flexibility available to certain LEAs under this provision, see D-6 and D-7 in this document.

- C-6.** What is the difference between the LEA supplement not supplant provisions at section 613(a)(2)(A)(ii) (34 CFR §300.202(a)(3)) and the LEA MOE provisions at section 613(a)(2)(A)(iii) (34 CFR §300.203(a))?

Under IDEA, section 613(a)(2)(A)(iii) (34 CFR §300.203(a) and (b)), an LEA must not use funds provided under Part B of the IDEA to reduce the level of expenditures for the education

of children with disabilities made by the LEA from local, or state and local, funds below the level of those expenditures for the preceding fiscal year. The standard for determining whether the MOE requirement has been met is that the LEA actually expends, in total or per capita, an equal or greater amount of local, or state and local, funds in each subsequent year. If an LEA fails to meet MOE and cannot justify the failure under 34 CFR §§300.204 or 300.205, the SEA must pay the Department, from funds for which accountability to the Federal Government is not required, the difference between the amount of local, or state and local, funds the LEA should have expended and the amount that it did.

Under IDEA, section 613(a)(2)(A)(ii) (34 CFR §300.202(a)(3)) (supplement/not supplant), Part B funds must be used to supplement state, local and other Federal funds (used for providing services to children with disabilities). If the LEA maintains (or exceeds) its level of local, or state and local, expenditures for special education and related services from year to year, either in total or per capita, then the Part B funds are, in fact, supplementing those local, or state and local, expenditures and the LEA has met its MOE and supplement/not supplant requirements.<sup>1</sup>

- C-7.** To what extent may a state or LEA use Stabilization funds to meet the MOE requirements of the IDEA, Part B program?

\*See Section H, added July 1, 2009

#### **D. Authorized Uses of IDEA Part B ARRA Funds**

- D-1.** What provisions of the EDGAR and the General Education Provisions Act (GEPA) apply to use of the IDEA ARRA funds?

All provisions of EDGAR and GEPA, as well as those in IDEA, that currently apply to IDEA funds apply to the IDEA Part B ARRA funds. An LEA must use IDEA Part B ARRA funds only for the excess costs of providing special education and related services to children with disabilities, except where IDEA specifically provides otherwise.

- D-2.** May IDEA funds, including IDEA Part B ARRA funds, be used for coordinated early intervening services (CEIS)?

Yes. LEAs may choose to use up to 15 percent of the total of the LEA's regular and ARRA Part B Grants to States and Preschool Grants awards to implement CEIS to students in kindergarten through grade 12 who have not been identified as needing special education and related services, but who need additional academic and behavioral support to succeed in a general education environment. The funds set aside for CEIS may be used by the LEA in FY 2009 or in both FYs 2009 and 2010, as long as the FY 2009 funds are obligated by September

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<sup>1</sup> Prior to 1992, the Part B regulations also included a "particular cost test" for determining whether supplanting occurred. This requirement meant, for example, that if an LEA spent Part B funds to pay for a teacher's salary that was previously paid for with state or local funds, a supplanting violation would occur, even though the total amount of state and local funds spent on special education is greater than the amount spent the previous year. At that time, an LEA could maintain effort but still violate the supplement/not supplant provision. The "particular cost test" was removed from the regulations by an amendment published in the Federal Register on August 19, 1992 (37 FR 37652) and that became effective on October 3, 1992. Therefore, no requirement currently exists related to supplanting "particular costs" and if an LEA maintains local, or state and local, effort, it will not violate the supplement/not supplant requirements of the IDEA.

30, 2011. If an LEA seeks both to set aside funds for CEIS and to take advantage of the flexibility to reduce its local expenditures for special education under section 613(a)(2)(C), the LEA must ensure that the amount it uses for CEIS does not exceed the maximum amount that could be set aside for CEIS (i.e., 15 percent of the total of its Part B allocations) minus the amount by which it seeks to reduce its MOE. Alternatively, the LEA may choose to take full advantage of the flexibility to reduce its MOE and use the freed-up local funds for early intervening services for children at risk of school failure without additional support. See D-6 through D-11 for more information on the use of the flexible authority to reduce local expenditures.

**D-3. May IDEA funds, including IDEA Part B ARRA funds, be used for construction or alteration of facilities?**

Section 605 of the IDEA authorizes the Secretary to allow the use of IDEA funds, including IDEA Part B ARRA funds, for construction or alteration of facilities if the Secretary determines that the program would be improved by allowing funds to be used for those purposes. In general, to be able to use IDEA funds for these costs, states will need to obtain prior approval from the Department; and LEAs will need to obtain prior approval from the state. (See 2 CFR Part 225, Appendix B, 15.b.) Any construction or alteration of facilities must comply with Appendix A to part 36 of title 28, Code of Federal Regulations, the “Americans with Disabilities Accessibility Guidelines for Buildings and Facilities” or Appendix A of subpart 101-19.6, of title 41, Code of Federal Regulations the “Uniform Federal Accessibility Standards.” (34 CFR §300.718) States and LEAs also must comply with requirements in 34 CFR Part 76 regarding construction, including the requirements in 34 CFR §§75.600-75.617 that are incorporated by reference in 34 CFR §76.600.

Additionally, if a state or LEA uses IDEA Part B ARRA funds for construction, it must comply with specific requirements relating to the use of American iron, steel and manufactured goods used in the project (ARRA section 1605), as well as the wage rate provisions of ARRA section 1606. Also, ARRA section 1604 prohibits the use of any ARRA funds, including IDEA Part B ARRA funds, for any casino, or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

**D-4. May IDEA funds, including IDEA Part B ARRA funds, be used to purchase equipment?**

Section 605 of the IDEA authorizes the Secretary to allow the use of IDEA funds for the acquisition of equipment if the Secretary determines that the program would be improved by allowing funds to be used for these purposes. In general, to be able to use IDEA funds for these costs, states will need to obtain the prior approval of the Department for the state’s use of IDEA funds for these costs; and LEAs will need to obtain the prior approval of the state for the LEA’s use of IDEA funds for these costs. (See, 2 CFR Part 225, Appendix B, 15.b.) For purposes of these prior approval requirements, “equipment” is defined to mean an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. (See 2 CFR Part 225, Appendix B, 15.a)

**D-5:** What additional rules apply to using IDEA funds, including IDEA Part B ARRA funds, for construction or alteration of facilities or for the acquisition of equipment?

Under OMB Circular A-87 (2 CFR Part 225), the following general criteria must be met in order for a cost to be allowable under any Federal award. The cost must:

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- b. Be allocable to Federal awards under the provisions of OMB Circular A-87 (2 CFR Part 225).
- c. Be authorized or not prohibited under state or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in OMB Circular A-87, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- g. Except as otherwise provided for in OMB Circular A-87, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented.

**D-6.** May LEAs use the flexible authority available under IDEA, section 613(a)(2)(C) (34 CFR §300.205) to reduce their local, or state and local, expenditures for special education and related services? If so, how?

Under certain circumstances, in accordance with IDEA section 613(a)(2)(C), in any fiscal year that an LEA's subgrant allocation exceeds the amount that the LEA received in the previous fiscal year, that LEA may reduce the level of local, or state and local, expenditures otherwise required by the LEA MOE requirements (in IDEA, section 613(a)(2)) by up to 50 percent of the increase in the LEA's subgrant allocation. (See D-7 through D-12 for more information.) The LEA must spend the 'freed-up' local or, state and local, funds on activities that are authorized under the Elementary and Secondary Education Act (ESEA) of 1965.

**D-7.** How can an LEA determine that it is eligible to reduce its state and local effort by up to 50 percent of the increase in its subgrant allocation? (Revised April 13, 2009)

The first step for an LEA that is considering taking advantage of this flexibility is to compare the total Federal subgrant allocation the LEA received under the Part B Grants to States program in FY 2008 with the total subgrant Grants to States allocation they expect to receive in FY 2009 (including both the regular Part B LEA Grants to States subgrant allocation *and* any Part B IDEA Grants to States ARRA funds that the LEA receives). If the total Federal subgrant allocation under the Part B Grants to States program received by an LEA in FY 2009 exceeds the amount received by that LEA in FY 2008 under that program, the LEA may

be eligible to reduce the level of local, or state and local, special education expenditures otherwise required, by up to 50 percent of this increase.

There are other provisions of the IDEA that limit whether an LEA may reduce local effort under IDEA section 613(a)(2)(C) (34 CFR §300.205). Under IDEA section 616(a) (34 CFR §300.600(a)(2)), SEAs are required to make determinations annually about the performance of each LEA using the following categories: Meets Requirements, Needs Assistance, Needs Intervention, and Needs Substantial Intervention. Under 616(f) (34 CFR §300.608(a)), if in making its annual determinations, an SEA determines that an LEA is not meeting the requirements of Part B, including meeting targets in the state's performance plan, the SEA *must* prohibit that LEA from reducing its MOE under IDEA section 613(a)(2)(C) for any fiscal year. Therefore, an SEA must prohibit an LEA from taking advantage of the MOE reduction under IDEA section 613(a)(2)(C) if the LEA's determination is Needs Assistance, Needs Intervention, or Needs Substantial Intervention.

Also, IDEA section 613(a)(2)(C)(iii) requires an SEA to prohibit an LEA from reducing its MOE if the SEA has taken responsibility for providing a FAPE in the LEA because the LEA is unable to establish and maintain programs of FAPE, or the SEA has taken action against the LEA under IDEA section 616. Finally, an LEA that is required to use 15 percent of its IDEA Part B allocation on CEIS because the SEA identified the LEA as having significant disproportionality under 34 CFR §300.646, will not be able to reduce local MOE under IDEA section 613(a)(2)(C).

- D-8.** What are the allowable uses of the “freed up” state and local funds for LEAs that can reduce their state and local effort?

LEAs utilizing the flexibility in IDEA section 613(a)(2)(C) (34 CFR §300.205) must use any funds that otherwise would have been used for special education and related services to support activities that are authorized under the Elementary and Secondary Education Act of 1965. One allowable use of those state and local funds would be to provide early intervening services to children at risk of school failure without additional support.

- D-9.** If an LEA opts to utilize the flexibility available under IDEA section 613(a)(2)(C) (34 CFR §300.205) to reduce its MOE in the current fiscal year, what effect would this reduction have on the LEA's expected level of MOE in future years?

If an LEA chooses to utilize the flexibility available under IDEA section 613(a)(2)(C) to reduce the level of local, or state and local, expenditures otherwise required in the current fiscal year, in subsequent fiscal years the LEA would be required to maintain effort at the reduced level -- except to the extent that an LEA increases the level of expenditures for the education of children with disabilities made by that LEA above the level of expenditures in FY 2009, using local, or state or local funds. In other words, an LEA choosing to take advantage of this flexibility may reduce the required MOE level in subsequent years, until that LEA increases the level of special education expenditures, using state or local funds, on its own.

- D-10.** What is an example of how the provision in IDEA section 613(a)(2)(C) (34 CFR §300.205), authorizing LEAs to reduce their MOE “up to 50 percent” operates, in light of the IDEA Part B ARRA funds?

The FY 2009 IDEA Part B ARRA funds will significantly increase LEAs' IDEA FY 2009 allocations over their FY 2008 allocations. Some LEAs will be able to take advantage of this flexibility to reduce MOE. For an eligible LEA to determine the 50 percent reduction amount, the LEA should first aggregate both distributions of its ARRA Grants to States (IDEA section 611) funds and its total regular Grants to States FY 2009 allocation. From that total, subtract the total FY 2008 Grants to States allocation. Fifty percent of the remainder (the increase in the LEA's Grants to States FY 2009 allocation over its FY 2008 allocation) represents the amount by which the LEA may, under certain circumstances, be able to reduce its local, or state and local, effort. For example, if the LEA received \$500,000 in FY 2008 and its IDEA Part B ARRA Grants to States and regular FY 2009 Grants to States allocation is \$1,200,000, the increase is \$700,000 and the LEA may reduce its local, or state and local, effort by \$350,000 (50 percent of \$700,000).

The LEA, however, must spend the full amount by which it reduces local, or state and local, effort for special education and related services under this provision on activities that could be supported with funds under the ESEA - regardless of whether the LEA is using funds under the ESEA for those activities. This includes any activities allowed under Title I, Impact Aid, and other ESEA programs. An LEA could use these funds to pay for activities that are currently being funded with other state or local funds or for new activities.

As discussed in question D-8 above, an LEA choosing to take advantage of this flexibility is only required to maintain expenditures at the reduced MOE level in subsequent years, until that LEA increases the level of special education expenditures, using state or local funds, on its own. For example, if the LEA expended \$2,000,000 of local and state funds on special education and related services in FY 2008 and lowered that amount by \$350,000 (from the example above) in FY 2009, the LEA must expend at least \$1,650,000 in state and local funds on special education and related services in FY 2010 to meet the MOE requirement in 34 CFR §300.203. In FY 2009, the year the LEA took the MOE reduction, it also must ensure that \$350,000 is expended on activities allowable under the ESEA. In FY 2010 and subsequent years, the LEA does not have to continue to separately "track" the \$350,000 expended for ESEA activities.

- D-11.** How does taking advantage of the 50 percent MOE reduction under the IDEA, and using a comparable amount of state and local funds for ESEA activities affect an LEA's ESEA MOE level?

Many (but not all) ESEA programs include a MOE requirement, which is described under 34 CFR §299.5. Under this MOE requirement, each LEA must demonstrate that, during the prior fiscal year, it expended at least 90 percent of the amount expended in the second preceding fiscal year. This MOE amount is calculated based on the LEA's expenditures from state and local funds for free public education, including expenditures for administration, instruction, attendance and health services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. The LEA may NOT include the following in its calculation: any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially declared disaster or any expenditures made from funds provided by the Federal Government.



We would expect that local and state funds used to provide special education and related services would be included in the calculation of state and local funds expended for a free public education. Therefore, shifting local and funds from special education activities to ESEA activities should have no appreciable effect on the LEA's overall expenditures for a free public education under 34 CFR §299.5.

**D-12.** Are there other provisions that would allow an LEA to reduce MOE?

Aside from the 50 percent reduction potentially allowed to LEAs under section 613(a)(2)(C) (34 CFR §300.205), LEAs may reduce their level of local, or state and local expenditures below amounts expended in the prior year under 34 CFR §300.204 if such a reduction is attributable to any of the following:

- 1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;
- 2) A decrease in the enrollment of children with disabilities;
- 3) The termination of the obligation of the agency, consistent with Part B, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child: (a) has left the jurisdiction of the agency; (b) has reached the age at which the obligation of the agency to provide FAPE to the child has termination; or (c) no longer needs the program of special education;
- 4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; and/or
- 5) The assumption of cost by the high cost fund operated by the SEA under 34 CFR §300.704(c).

**E. Transparency, Accountability, and Reporting**

**E-1.** Are states required to track IDEA Part B ARRA funds separately from IDEA regular funds?

Yes. ARRA requires that recipients of funds made available under that Act separately account for, and report on, how those funds are spent. The Department has assigned a new CFDA number to the IDEA Part B ARRA funds in order to facilitate separate accounting for the funds. Recipients will need to maintain accurate documentation of all ARRA expenditures to ensure that the data reported is accurate, complete, and reliable. States will be expected to monitor sub-grantees to help ensure data quality and the proper expenditure of ARRA funds. Further information on ARRA reporting instructions will be provided shortly at [www.FederalReporting.gov](http://www.FederalReporting.gov).

**E-2.** Are there rules that govern the amount of IDEA, Part B ARRA funds that an SEA or LEA may draw down at any one time?

Yes. An SEA must have an effective system for managing the flow of funds that ensures that it and its LEAs are able to draw down funds as needed to pay program costs but that also minimizes the time that elapses between the transfer of the funds and their disbursement by the SEA or LEA, in accordance with U.S. Department of the Treasury regulations at 31 CFR Part 205. (See 34 CFR §80.21(b).) An SEA and LEA must promptly, but at least quarterly,

remit to ED interest earned on advances. (34 CFR §80.21(i)) The Department will take appropriate actions against grantees and subgrantees that fail to comply with this requirement.

**E-3.** What information is a state required to include in its quarterly reports under the ARRA?

A state is required to submit reports containing the information required under section 1512(c) of the ARRA. These reports must be submitted not later than 10 days after the end of each calendar quarter. OMB is expected to issue government-wide guidance on the ARRA reporting requirements and procedures.

**E-4.** What are our shared responsibilities for ensuring that all funds under the ARRA are used for authorized purposes and instances of fraud, waste, and abuse are prevented?

All ARRA funds must be spent with an unprecedented level of transparency and accountability. Accordingly, SEAs and LEAs must maintain accurate, complete, and reliable documentation of all IDEA, Part B ARRA expenditures. The ARRA contains very stringent reporting requirements and requires that detailed information on the uses of funds be available publicly on [www.recovery.gov](http://www.recovery.gov).

An SEA has important oversight responsibilities and must monitor grant and subgrant activities to ensure compliance with all applicable Federal requirements. If an SEA or LEA fails to comply with requirements governing the use of IDEA, Part B funds, the Department may, consistent with applicable administrative procedures, take one or more enforcement actions, including withholding or suspending, in whole or in part, IDEA, Part B funds or recovering misspent funds following an audit.

The ARRA establishes the Recovery Act Accountability and Transparency Board, which is responsible for coordinating and conducting oversight of spending under the ARRA to prevent fraud, waste, and abuse. The Department's Office of Inspector General (OIG) will conduct comprehensive audits of ARRA implementation activities. In addition, Department program offices will closely monitor these activities.

Any instances of potential fraud, waste, and abuse should be promptly reported to the OIG hotline at 1-800-MIS-USED or [oig.hotline@ed.gov](mailto:oig.hotline@ed.gov). Moreover, SEAs and LEAs are reminded that significant new whistleblower protections are provided under section 1553 of the ARRA.

In the coming weeks, the Department will provide additional information on how to help prevent instances of fraud, waste, and abuse.

**F. Parentally-Placed Private School Students**

**F-1:** How will the ARRA funds be included in the calculation for proportionate share of IDEA funds for services to parentally-placed private school children?

In calculating the proportionate share required under IDEA section 612(a)(10)(A)(i)(I), an LEA must first aggregate the FY 2009 funds received under the Grants to States regular and ARRA awards and apply the formula outlined in 34 CFR §300.133 to the aggregated amount.

Similarly, for children aged 3-5, the proportionate share is based on the total FY 2009 funds received under the Preschool Grants regular and ARRA awards.

- F-2:** If an LEA has completed its consultation required under IDEA section 612(a)(10)(A)(iii), will the LEA have to conduct additional consultation because the IDEA ARRA funds will increase the amount available for equitable services to parentally-placed private school children?

Under section 612(a)(10)(A)(iii), timely and meaningful consultation must occur during the design and development of special education and related services. The consultation process must include discussions of “how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process may meaningfully participate in special education and related services.” An LEA may be able to use the mechanisms developed for the ongoing consultation process to work with representatives of the private schools located in the area served by the LEA and representatives of parents of parentally-placed private school children with disabilities in determining how the proportionate share of IDEA ARRA funds will be expended. In any case, an LEA must ensure that it has engaged in consultation with the private school representatives and representatives of parents of parentally-placed private school children with disabilities about how the additional funds available for services for parentally-placed private school children with disabilities will be used.

- F-3:** May an LEA spend part of the proportionate share of the IDEA Part B ARRA funds on children with disabilities parentally-placed in private schools in school year 2009-2010 and part in school year 2010-2011?

Yes, subject to certain conditions. Under 34 CFR §300.133(a), each LEA is required to spend a minimum amount of its subgrants under Part B Grants to States and Preschool Grants programs on children with disabilities parentally-placed in private elementary and secondary schools. The ARRA provides a substantial increase in FY 2009 IDEA, Part B funds. As provided in 34 CFR §300.133(a)(3), if an LEA has not expended all of the proportionate share of its Part B subgrant by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services to children with disabilities parentally-placed in private schools during a carry-over period of one additional year. An LEA must consult with private school representatives and parents of parentally-placed private school students in designing and developing the special education and related services that the LEA will provide for parentally-placed private school children. (34 CFR §300.134) As part of this consultation, the LEA, private school representatives and parents of parentally-placed private school students must consider how the proportionate share of IDEA funds (including the regular and ARRA IDEA Part B funds) should be spent. One option for spending those funds would be to spend some in school year 2009-2010 and some in school year 2010-2011.

## **G. Civil Rights Obligations**

- G-1:** Does the receipt of IDEA Part B ARRA funds require recipients to comply with civil rights laws?

Yes. The receipt of Federal funds obligates recipients to comply with civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability and age. For

additional information

see: <http://www.ed.gov/policy/gen/leg/recovery/notices/civil-rights.html>.

## **H. Treating Stabilization Funds as State or Local Funds for Purposes of Meeting the IDEA, Part B MOE Requirements (Section H added July 1, 2009)**

### **State-level MOE**

#### **H-1. What is the IDEA, Part B state-level MOE requirement?**

The IDEA, Part B state-level MOE requirement (Section 612(a)(18) of the IDEA and 34 CFR §300.163) provides that a state is eligible to receive Part B funds as long as “[t]he State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.”

Under the IDEA, Part B state-level MOE requirement, states identify the amount of state funds that are expended by the state, including the SEA and other state agencies for the education of children with disabilities, including for special education and related services, and state funds that are made available to local educational agencies (LEAs) for the education of children with disabilities. For state funds that are made available to LEAs, states identify the amount of state funding, if any, that is distributed through formulae to LEAs for the education of children with disabilities.

#### **H-2. What Stabilization funds may be treated as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement?**

Stabilization funds are provided to states as Education Stabilization funds and Government Services Stabilization funds.

With respect to funds that are provided to states as Education Stabilization funds, with prior approval, a state may treat as state support for purposes of meeting the IDEA state-level MOE requirement, those Education Stabilization funds that are being used to replace state support for special education provided through primary funding formulae.

The proportion of Education Stabilization funds that the state distributes through the state’s primary funding formulae for elementary and secondary education must be the same as the proportion of the state’s primary funding formulae for elementary and secondary education it generally treats as state support for special education for purposes of the IDEA state-level MOE requirement. Similarly, with prior approval, Education Stabilization funds that are being used to replace state support for special education provided through a special education funding formula could be treated as state support for the IDEA MOE requirement. States may not consider Education Stabilization funds that are distributed to LEAs on the basis of their proportionate share of funding under Title 1, Part A, Subpart 2 of the ESEA to be state support for the education of children with disabilities, because those funds do not replace state support for the education of children with disabilities.

With respect to funds that are provided to states as Government Service Stabilization funds, for purposes of the IDEA, Part B state-level MOE requirement, a state, with prior approval, may treat as state support for the education of children with disabilities any Government

Services Stabilization funds that it uses for the education of children with disabilities, whether provided to LEAs or to other agencies.

**H-3.** What criteria will the Department apply in determining whether to give prior approval to a state's request to treat Stabilization funds as state funds for purposes of the IDEA, Part B state-level MOE requirement?

Section 14012(d) of the ARRA provides that, "[u]pon prior approval from the Secretary," a state or LEA may treat Stabilization funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that the Department administers. (See H-4 below for information related to "prior approval.")

The Secretary will permit a state to treat Stabilization funds, in the amounts described in question H-2, as state funds for meeting the IDEA, Part B state-level MOE requirement only if the following criteria are met:

1. The state maintains auditable data to demonstrate that it is complying with the Stabilization program MOE requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in section 14012(c) of the ARRA;
2. The state maintains auditable data to demonstrate that it needs Education Stabilization funds to restore support for elementary and secondary education, or that it is using only Government Services Stabilization funds to meet state-level MOE;
3. The state maintains auditable data to demonstrate that the percentage of total state revenues available to the state that is used to support education for children with disabilities does not decrease from one year to the next;
4. The state maintains auditable data to demonstrate that the percentage of total state revenues available to the state that is used to support elementary, secondary and higher education combined does not decrease from one year to the next; and
5. To provide for proper accounting of Stabilization funds, the state identifies to each LEA the amount of Stabilization funds that it distributes to that LEA that the state is treating as state funds for the purposes of meeting the state-level MOE requirement.

**H-4.** Must a state apply to the Secretary for prior approval to treat Stabilization funds as state funds for meeting the IDEA, Part B state-level MOE requirement?

No. The Secretary grants prior approval to a state to treat Stabilization funds as state funds for purposes of IDEA, Part B state-level MOE so long as a state meets the criteria in H-3. In other words, if a state meets the criteria in H-3, it has prior approval from the Department to treat Stabilization funds as state funds for purposes of meeting IDEA, Part B state-level MOE. If a state does not meet the criteria in H-3, and has not received specific prior approval from the Department under the circumstances described in H-5, it does not have prior approval and may not treat Stabilization funds as state funds for purposes of meeting the IDEA, Part B state-level MOE requirement.

- H-5.** If the percentage of total state revenues used to support education has decreased from one year to the next, is it still possible for a state to treat Stabilization funds as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement?

Because the state would not meet criterion #4 described in the response to question H-3, it would not have prior approval from the Department by virtue of meeting those criteria. However, in this circumstance, a state, by letter to the Department, could specifically request prior approval to treat Stabilization funds as state funds for the purpose of meeting IDEA, Part B state-level MOE. The request must address whether there were any exceptional or uncontrollable circumstances contributing to the year-to-year decreases, the extent of the decline in available financial resources, and any changes in demand for educational services.

Only if the Department grants specific prior approval based on the state's request, would a state in this circumstance be able to treat Stabilization funds as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement.

### **Local-level MOE**

- H-6.** What is the IDEA, Part B local-level MOE requirement?

The IDEA, Part B local-level MOE requirement (Section 613(a)(2)(A)(iii) of the IDEA and 34 CFR §300.203) is that the LEA must budget, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which the information is available:

- local funds only or
- state and local funds.

Reductions in local-level MOE may be taken for voluntary departures and departures for just cause of special education or related services personnel; decreases in the enrollment of children with disabilities; termination of the obligation of the agency to provide an exceptionally costly special education program to a particular child under specific circumstances; termination of costly expenditures for long-term purchases such as costly equipment or construction of school facilities; and assumption of cost by a state's high cost fund. (See 34 CFR §300.204.)

Reductions in local-level MOE may also be possible as described in D-6 through D-10.

- H-7.** What Stabilization funds may be treated as local funds for the purpose of meeting IDEA, Part B local-level MOE?

An LEA may treat as local funds for the purpose of meeting local-level MOE any Education Stabilization funds, including Stabilization funds distributed under the Title I, Part A formula, that are provided to it and that it uses for the education of children with disabilities, except for Education Stabilization funds that the state has identified as funds that it is treating as state funds for meeting the state-level MOE requirement. (As specified above, a state is required to identify to each LEA any Stabilization funds the LEA receives that the state is treating as state funds for purposes of state-level MOE.) An LEA may also treat as local funds Government Services Stabilization funds that it receives and uses for the education of

children with disabilities, unless those funds have been identified by the state as Stabilization funds that the state is treating as state funds for state-level MOE purposes.

An LEA may not treat as local funds for local-level MOE purposes Stabilization funds that the state is treating as state funds for state-level MOE purposes. However, an LEA may include these funds in its calculation of local-level MOE, to the extent that the calculation is based on state and local funds.

- H-8.** Must an LEA maintain documentation demonstrating that any Stabilization funds that it is treating as local funds for purposes of the IDEA, Part B local-level MOE requirement are, in fact, spent on the education of children with disabilities?

Yes. An LEA must maintain documentation that the Stabilization funds that it is treating as local funds for purposes of local-level MOE in fact were spent on the education of children with disabilities. If the LEA is basing local-level MOE on the combination of state funds and local funds, the LEA must maintain documentation that the Stabilization funds that it is treating as local funds for purposes of local-level MOE as well as any Stabilization funds that the state has identified to it as funds that the state is treating as state funds for purposes of state-level MOE were, in fact, spent on the education of children with disabilities.

- H-9.** Under what circumstances will the Department give prior approval to an LEA's treating Stabilization funds as local funds for purposes of the IDEA, Part B local-level MOE requirement?

Section 14012(d) of the ARRA provides that, "[u]pon prior approval from the Secretary," a state or LEA may treat Stabilization funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that the Department administers.

The Department gives LEAs prior approval to treat Stabilization funds that are provided to the LEA and that the LEA uses for the education of children with disabilities (except for Stabilization funds that the state is treating as state funds for meeting the IDEA, Part B state-level MOE requirement) as local funds for purposes of local-level MOE if:

The state demonstrates to the Department, on the basis of auditable data, that it is complying with the Stabilization program MOE requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in section 14012(c) of the ARRA; and

The LEA maintains auditable data to demonstrate that it separately accounts for Stabilization funds that the state treats as state funds for meeting state-level MOE, if any, and Stabilization funds that the LEA treats as local funds for meeting local-level MOE, including that those funds were spent on the education of children with disabilities. A state may request additional information from an LEA to ensure that it properly maintains auditable data.

- H-10.** Must an LEA apply to the Secretary for prior approval to treat Stabilization funds as local funds for meeting the IDEA, Part B local-level MOE requirement?

No. The Secretary grants prior approval to an LEA to treat Stabilization funds as local funds for purposes of the IDEA, Part B local-level MOE requirement so long as the state and LEA meets the criteria in H-9, including any additional information that the state may require to ensure that the LEA properly maintains auditable data concerning the use of its Stabilization funds. LEAs should contact their SEAs to determine whether they meet the criteria for prior approval. If the criteria in H-9 are met, an LEA has prior approval from the Department, and may treat Stabilization funds as local funds for purposes of meeting the IDEA, Part B local-level MOE requirement. If the criteria are not met, the LEA does not have prior approval and may not treat Stabilization funds as local funds for purposes of meeting the IDEA, Part B local-level MOE requirement.

States may choose to advise LEAs that choose to treat Stabilization funds as local funds for purposes of meeting local-level MOE to submit any necessary information with any amendments to the LEA's application for IDEA, Part B funds.

**H-11.** Must an LEA obtain prior approval if the only Stabilization funds that it is including in meeting local-level MOE are those that the state has identified as funds the state is treating as state funds for purposes of the IDEA, Part B state-level MOE requirement?

No. If the only Stabilization funds that an LEA includes in its calculation of local-level MOE are funds that the state identified as state funds for purposes of state-level MOE, an LEA does not need any additional prior approval, as the state would already have received prior approval from the Department to treat the Stabilization funds as state funds for IDEA, Part B MOE purposes. Of course, the LEA would still be required to maintain documentation that those Stabilization funds were actually spent on the education of children with disabilities.

**H-12.** How does treating Stabilization funds as state or local funds for IDEA, Part B MOE purposes affect how an LEA demonstrates that it is meeting local-level MOE?

- If the state is not treating Stabilization funds as state funds for the purpose of state-level MOE, but the LEA is treating Stabilization funds as local funds for the purpose of local-level MOE, the LEA may base local-level MOE on either the local funds only (including those Stabilization funds), or local (including those Stabilization funds) and state funds. The LEA would have to maintain documentation that the Stabilization funds that are being used to meet local-level MOE in fact were spent on the education of children with disabilities.
- If the state is treating some Stabilization funds as state funds for the purpose of state-level MOE, and the LEA is treating other Stabilization funds as local funds for the purpose of local-level MOE, the LEA may base local-level MOE on either the local funds only (including the Stabilization funds the LEA is treating as local funds for MOE purposes), or local (including the Stabilization funds the LEA is treating as local funds for MOE purposes) and state (including the Stabilization funds the state is treating as state funds for the purpose of state-level MOE and has distributed to the LEA) funds. The LEA would have to maintain documentation that the Stabilization funds that are being used to meet local MOE, as local funds and as state funds, if any, in fact were spent on the education of children with disabilities.



**H-13.** Does treating Stabilization funds as state or local funds for IDEA, Part B MOE purposes reduce the level of effort that a state or LEA must demonstrate in future years?

No. If a state or LEA treats Stabilization funds as state or local funds for purposes of meeting the state-level or local-level IDEA, Part B MOE requirements, it does not reduce the state's or LEA's MOE in any future year.

## Use of Funds

### **American Recovery and Reinvestment Act of 2009: Using ARRA Funds Provided Through Part B of the *Individuals with Disabilities Education Act (IDEA)* to Drive School Reform and Improvement**

The *American Recovery and Reinvestment Act* of 2009 (ARRA) provides approximately 100 billion dollars to save and create jobs and to reform education through various funding streams, including: Part B of *IDEA (IDEA Part B)*; Title I, Part A of the *Elementary and Secondary Education Act of 1965, as amended (ESEA)*; and the *State Fiscal Stabilization Fund (SFSF)*.

This short-term influx of additional funding is a historic opportunity to improve American education. This document provides guidance on possible uses of *IDEA Part B ARRA* funds that are likely to have an impact on student learning outcomes and school reform.



On April 24, 2009, the Department released *Using ARRA Funds to Drive School Reform and Improvement*,<sup>2</sup> which was intended to spark ideas on how schools and local educational agencies (LEAs) could use these one-time funds over the next 2 years to improve results for all students, including students with disabilities; accelerate reform; increase long-term capacity for improvement; avoid the funding cliff; and improve productivity.

The purpose of this guidance is to provide information related to *IDEA Part B* funds made available under ARRA. This guidance builds on the April 24, 2009 document by providing: (1) additional examples of potential ARRA expenditures that are relevant to improving results for students with and without disabilities; (2) more detailed explanations for all of the examples; and (3) suggestions regarding the coordinated use of funds to support some of the examples. Recognizing that many LEAs may need to use a large portion of the ARRA funds to support teacher salaries or other critical short-term needs, this guidance suggests how LEAs can also use these funds to support activities that increase the capacity of LEAs and schools to improve results for students with and without disabilities in a manner that is consistent with regulatory requirements and OMB guidance and in coordination with other funding sources including their regular *IDEA Part B* allocation.

Please note that the examples are not meant to cover every possible use of *IDEA Part B ARRA* funds. They represent potential uses of funds to improve educational outcomes for students with disabilities from early learning through high school and are intended to generate discussions within LEAs and schools regarding effective uses of *IDEA Part B ARRA* funds.

*IDEA Part B ARRA* funds should be viewed as a supplement to the regular FY 2009 *IDEA* grant funds. As such, all *IDEA Part B ARRA* funds must be used consistent with the current *IDEA Part B* statutory and regulatory requirements and applicable requirements in the General Education Provisions Act and the Education Department General Administrative Regulations. An LEA must use *IDEA Part B ARRA* funds only for the excess costs of providing special education and related services to children with disabilities, except where *IDEA* specifically provides otherwise. The following Web site provides additional guidance regarding the use of *IDEA Part B ARRA* funds: <http://www.ed.gov/policy/gen/leg/recovery/guidance/idea-b.pdf>.

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<sup>2</sup> <http://www.ed.gov/policy/gen/leg/recovery/guidance/uses.doc>

## General Considerations

In planning for the use of *IDEA Part B ARRA* funds, LEAs may consider four approaches that are particularly important to effect coherent, effective, and sustainable reforms. These approaches are: (1) aligning with *ARRA*'s reform goals; (2) supporting students with disabilities in the context of schoolwide reforms; (3) ensuring strategies are data-driven and evidence-based; and (4) increasing capacity and productivity.

First, LEAs are encouraged to consider strategies and activities that are consistent with *ARRA*'s four reform goals: (1) increasing teacher effectiveness and equitable distribution of effective teachers; (2) adopting rigorous college and career-ready standards and high-quality assessments; (3) establishing data systems and using data for improvement; and (4) turning around the lowest-performing schools. To help State educational agencies (SEAs) and LEAs align their planning and discussions about *IDEA* with their overall reform efforts, suggestions for uses of funds in this guidance document are organized around three of the reform goals. This guidance does not contain a separate section addressing the goal of turning around the lowest-performing schools because all of the examples can support meeting that goal.

Second, planning for effective uses of *IDEA Part B ARRA* funds should be done within the broader context of schoolwide reform initiatives that are designed to improve learning outcomes for all students. In 2007, 80 percent of all students with disabilities spent at least some portion of their day in a regular education classroom. Fifty-seven percent spent 80 percent or more of their time in a regular education classroom. LEAs are encouraged to use *IDEA* funds in the context of their overall plans for systemic school reform. In appropriate cases, they may coordinate the use of *IDEA Part B ARRA* funds with funds from other sources (e.g., regular *IDEA Part B* allocation, *ESEA*, *SFSF*, and State and local) consistent with Federal program requirements in schoolwide initiatives to improve outcomes for all students, including students with disabilities. In other situations, LEAs may use *IDEA Part B ARRA* funds to exclusively support the unique special education and related services needs of students with disabilities in ways that complement the LEA's overall school reform activities. Prior to making decisions about how to spend *ARRA* funds, LEAs and schools should consider the views of a wide array of stakeholders, including general and special education LEA and school leaders, as well as teachers, students, and families and review existing data, identify areas of greatest need, and focus on effective strategies that are consistent with their overall plan for improving student achievement effectively within 2 years.

Third, LEAs should seek to ensure that activities and initiatives supported using *IDEA Part B ARRA* funds are data-driven and evidence-based to increase the likelihood that such activities will improve student learning outcomes. Thus, LEAs should consider using *IDEA Part B ARRA* funds to support data analyses that help them better understand and address critical issues such as: (1) patterns of student achievement and student assignment to interventions within and across schools to determine whether appropriate interventions for students with disabilities are available; (2) the placement patterns (restrictiveness of placement) of students with disabilities and whether these placements may inhibit effective and efficient instruction and service delivery; (3) disproportionate representation in the identification and disciplining of students with disabilities; (4) special education staffing needs by subject, school, grade span, and expertise; and (5) the development of effective strategies to address

special education staffing needs through recruitment, alternative or dual certification programs, professional development, and retention strategies. Based on an understanding of student, teacher, and school needs, LEAs should support the redesign of programs, service delivery, and implementation of evidence-based classroom interventions. LEAs and schools often implement a myriad of conflicting interventions that lack fidelity and consistency over time. In supporting the implementation of classroom interventions, LEAs should attend to fidelity (i.e., ensuring that interventions are implemented consistent with the research upon which they are based), sustainability (i.e., ensuring that interventions are effectively maintained over time through persistent and skillful support for teachers, staff, and school leadership), and progress tracking (i.e., explaining how they will track progress in order to make adjustments and improve over time).

Finally, because *ARRA* funds are available for only 2 years, LEAs should consider how to use these short-term funds to build organizational and staff capacity for sustaining reform efforts when *ARRA* funding ends. Moreover, given the current economic conditions and the resulting uncertainty about the levels of State and local funding that will be available for education over the next few years, it is particularly important for LEAs to consider how to improve productivity and how to invest *ARRA* funds in ways that are likely to enhance effectiveness and efficiency.

### **Uses of Funds under *IDEA***

The purpose of *IDEA Part B* grants is to assist States, outlying areas, freely associated States, and the Secretary of the Interior to provide special education and related services to children with disabilities, including that children with disabilities have access to a free appropriate public education (FAPE). The term FAPE<sup>3</sup> refers to special education and related services that are designed to meet a child's unique needs and that will prepare the child for further education, employment, and independent living. In general, *IDEA Part B* funds must be used only to pay the excess costs of providing FAPE to children with disabilities, such as costs for special education teachers and administrators; related services providers (speech therapists, psychologists, etc.); materials and supplies for use with children with disabilities; professional development for special education personnel; professional development for regular education teachers who teach children with disabilities; and specialized equipment or devices to assist children with disabilities. Generally *IDEA* funds cannot be used for core instruction in the general education classroom, instructional materials for use with non-disabled children, or for professional development of general education teachers not related to meeting the needs of students with disabilities, except as described below. Two exceptions to these guidelines are when *IDEA Part B* funds are used for coordinated early intervening services<sup>4</sup> (CEIS) or are consolidated in a Title I schoolwide school (under *ESEA*).

LEAs may use up to 15 percent of their *IDEA Part B* funds for CEIS to assist students in grades K through 12 (with an emphasis on K through 3) who are not currently identified as needing special education and related services but who need additional academic and behavioral support to succeed in

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<sup>3</sup> *IDEA* Section 602 (9) The term 'free appropriate public education' means special education and related services that--

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 614(d).

<sup>4</sup> Note: The calculation for the maximum CEIS funds is based on the total of the regular *IDEA, Part B* allocations plus *IDEA Part B ARRA* funds.

a general education environment.<sup>5</sup> CEIS funds can be used to provide professional development<sup>6</sup> to educators who are responsible for helping children who need additional academic and behavioral support succeed in a general education environment or to provide direct interventions to children who need academic and behavioral support. CEIS funds may be used in coordination with ESEA funds but must supplement, and not supplant, ESEA funds for those activities.<sup>7</sup>

A Title I schoolwide school may use, to carry out the schoolwide project, an amount of *IDEA* funds that is the same proportion of the total cost of the project as the number of children with disabilities benefiting from the program is to the total school population participating in the program. In a Title I schoolwide school that consolidates Federal funds (e.g., *ESEA*, *IDEA*, etc.), a school may use those funds for any activity in its schoolwide plan without accounting separately for the funds.<sup>8</sup> The schoolwide school needs to ensure that children with disabilities continue to receive FAPE, but would not need to show that *IDEA* funds were spent only on allowable special education and related services expenditures.<sup>9</sup>

The following sections include examples of how *IDEA Part B ARRA* funds could be used over the next 2 years to improve student outcomes and to advance systemic reforms that will have an enduring impact. The examples included in this document are in no way exhaustive nor should they be seen as a required “menu” from which to choose. However, most of the examples were included based on questions the Department of Education received from States and LEAs regarding the appropriateness of using *IDEA Part B ARRA* funds to support a particular strategy.

In using *IDEA Part B ARRA* funds, LEAs are encouraged to develop or build on existing strategies; to use the best available evidence about effective interventions; and to be cognizant of the interests and needs of their students, families, and community. Any LEA or school strategy should be based on the LEA’s data and context.

The examples in this document are provided to help stimulate conversations among LEA and school leaders as they consider the best way to spend *IDEA Part B* and other *ARRA* funds in ways that improve results for students and to demonstrate that *IDEA Part B* funds can be used for a wide variety of strategies to improve student outcomes. Many of these examples focus on schoolwide initiatives that address the needs of students with and without disabilities. To implement these schoolwide initiatives effectively, LEAs will need to coordinate the various funding streams consistent with program requirements. Further information on the programmatic and fiscal issues associated with schoolwide programs can be found in the *IDEA* Topic Brief entitled *Alignment with the No Child Left Behind Act*,<sup>10</sup> and in the *Designing Schoolwide Programs*<sup>11</sup> non-regulatory guidance. LEAs also are encouraged to use *IDEA Part B* funds available for CEIS strategically to support reform initiatives for struggling learners who are currently not receiving special education services.

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<sup>5</sup> *IDEA* Section 613(f).

<sup>6</sup> *IDEA* Section 613(f)(2)(A).

<sup>7</sup> *IDEA* Section 613(f)(5).

<sup>8</sup> *ESEA* Section 1114.

<sup>9</sup> *IDEA* Section 613(a)(2)(D).

<sup>10</sup> <http://idea.ed.gov/explore/home>

<sup>11</sup> [www.ed.gov/policy/elsec/guid/designingswpguid.doc](http://www.ed.gov/policy/elsec/guid/designingswpguid.doc)

Links to federally supported resources accompany all of the examples included in this document. The links provide additional information as well as some information regarding the research underlying each of the highlighted strategies. In addition, when appropriate, footnotes are provided whenever statutory language is referenced or text is quoted or paraphrased.

# CCSSO Memorandum – February 18, 2009



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## MEMORANDUM

TO: Chief State School Officers  
FROM: Gene Wilhoit, Executive Director  
DATE: February 18, 2009  
RE: Maintenance of Effort and Supplement Not Supplant Issues under the American Recovery and Reinvestment Act (H.R.1, P.L.111-\_\_)

Questions have been raised by a number of states about maintenance of effort and supplement not supplant requirements that would apply to funding for elementary and secondary education in the American Recovery and Reinvestment Act ("Recovery Act"), as signed by President Obama on February 17, 2009. This memorandum provides general, preliminary guidance on the effects of these provisions. We expect the U.S. Department of Education (USED) to provide guidance interpreting these provisions and we will review and update this memorandum, as appropriate, in light of any such guidance.

The Recovery Act includes two overarching sources of funds for elementary and secondary education: (1) a new State Fiscal Stabilization Fund; and (2) funding for existing education programs such as Title I-A of the Elementary and Secondary Education Act (ESEA) and Parts B and C of the Individuals with Disabilities Education Act (IDEA). Maintenance of effort and supplement not supplant provisions apply differently to these funding sources, as explained below.

### **I. State Fiscal Stabilization Fund (Recovery Act Title XIV)**

The State Fiscal Stabilization Fund includes a maintenance of effort provision that may be waived or modified under certain conditions. There is no supplement not supplant provision applicable to fiscal stability funds.

The State Fiscal Stabilization Fund established by Title XIV of the Recovery Act provides funds to the Governors for education and other government services for FY's 2009-2011. To receive these funds, a Governor must submit an application to the Secretary of Education (Secretary). Among other things, the application must provide an assurance that the state will, in each of FYs 2009, 2010, and 2011, maintain support for elementary and secondary education at least at the level of that support in FY 2006. (There is a parallel assurance relating to state support for public institutions of postsecondary education.) This provision applies only to state support, not to local support or state and local expenditures aggregated.

Under Section 14012 of the Recovery Act, this maintenance of effort requirement may be waived or modified by the Secretary to relieve fiscal burdens on states and local educational agencies (LEAs) that have experienced a precipitous decline in financial resources for any of FYs 2009, 2010, or 2011, but only if the Secretary determines that the state or LEA will not provide for elementary and secondary education

a smaller percentage of total available revenues for the fiscal year under consideration than the amount provided for that purpose in the prior fiscal year.

The Recovery Act does not include a supplement not supplant provision applicable to the state fiscal stability funds.

## **II. Stimulus Funding for Existing Education Programs (Recovery Act Title VIII)**

Funding for existing education programs is generally governed by relevant maintenance of effort and supplement not supplant rules in existing law. Some waiver processes within these laws continue in effect.

In addition, upon specified conditions, recipients of state stabilization funds may treat those funds as non-federal funds for the purposes of relevant, program-specific maintenance of effort requirements.

### **A. In General**

Title VIII of the Recovery Act provides funding for existing elementary and secondary education programs, including Title I-A, ESEA, Parts B and C of IDEA, and other elementary and secondary education programs. The Recovery Act does not include separate maintenance of effort or supplement not supplant requirements applicable to funding for these programs, but several of these programs, including Title I-A, ESEA and IDEA-B & C, have their own maintenance of effort and/or supplement not supplant provisions.

The Recovery Act does not provide for waiving or modifying maintenance of effort and supplement not supplant provisions under these other laws, although, as discussed below, waiver provisions for maintenance of effort (but not generally for supplement not supplant) are included in several of these laws. Thus, maintenance of effort and supplement not supplant requirements would continue in effect, both with regard to funds provided to these programs under the Recovery Act and with regard to regular annual appropriations for these programs.

However, the Recovery Act provides in section 14012(d) that, **with the prior approval of the Secretary**, a state or LEA that receives funds under the State Stabilization Fund may treat any portion of these funds used for elementary, secondary, or postsecondary education as non-federal funds for the purpose of maintenance of effort requirements under any other program (such as Title I-A, ESEA and IDEA). (Thus, to receive State Stabilization funds, absent a waiver or modification by the Secretary, a state must meet a maintenance of effort requirement tied to the level of state support for elementary and secondary education in FY 2006, but the state may, with the prior approval of the Secretary, use State Stabilization funds to help it meet maintenance of effort requirements under other programs.) The Governor's application for funding under the State Stabilization Fund needs to indicate whether and what amount of such funds the state proposes to use to meet maintenance of effort requirements under the ESEA and IDEA. Section 14012(d) also provides that the level of effort required by a state or LEA shall not be reduced for the following year. This provision is ambiguous and may be the subject of guidance from USED, but it would seem to mean that in years subsequent to funding under the Stabilization Fund, states would need to meet applicable maintenance of effort requirements in other programs without regard to the Stabilization funds, either in the base year or the subsequent year.

These provisions – permitting treatment of State Stabilization funds as state funds for purposes of maintenance of effort requirements under other programs – do not appear generally to apply to



supplement not supplant requirements in other programs or to affect the issue of compliance with supplement not supplant requirements in programs such as Title I-A, ESEA and IDEA-B. However, although the law is unclear on this point, and further clarification on this point may be provided by USED, they would appear to apply to those supplement not supplant provisions that have been interpreted by USED to require maintenance of state fiscal effort for specified purposes, such as those under IDEA-C. (Section 14012(d) expressly refers to IDEA-C, and IDEA-C does not have a separate maintenance of effort provision, but includes a supplement not supplant provision that has been interpreted as a maintenance of effort requirement by USED.)

#### **B. Specific Maintenance of Effort and Supplement Not Supplant Requirements Under Existing Programs**

Maintenance of effort and supplement not supplant provisions under current elementary and secondary programs vary somewhat in their applicability, scope, and rigidity:

##### Maintenance of Effort

**Title I and related.** The maintenance of effort provision applicable to Title I-A and other ESEA programs applies to LEAs, not to states, and requires that the combined fiscal effort per student or the aggregate expenditures of the LEA and state with respect to the provision of free public education by the local agency for the preceding fiscal year was not less than 90% of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. The law permits the Secretary to waive this requirement if the Secretary determines that doing so would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or due to a precipitous decline in the financial resources of the LEA. A waiver based on significant reductions in state revenues due to the recession would come within this authority, and there is nothing in the law that would preclude the Secretary from providing a consolidated waiver for all LEAs in a state, assuming the budget information supports the waiver for all districts. Of course, in considering a request for waiver, the Secretary would be expected to consider the availability of state stabilization funds for treatment as non-federal funds for purposes of the maintenance of effort requirement, as provided in section 14012 of the Recovery Act.

**IDEA.** Part B of IDEA includes similar maintenance of effort provisions applicable separately at the state and local levels. It prohibits a state from reducing state financial support for special education and related services for, or the excess costs of educating, children with disabilities below the amount of that support for the preceding fiscal year. It also authorizes the Secretary to waive this requirement on grounds similar to those in ESEA, including "a precipitous and unforeseen decline in the financial resources of the state." Other Part B provisions prohibit using Part B funds to reduce the level of expenditures for the education of children with disabilities made by an LEA from local funds below the level of those expenditures for the preceding fiscal year. The law provides for exceptions to this local prohibition related, among other things, to enrollment decreases of children with disabilities, or to cases where the LEA's Part B allocation increases from the prior year and the LEA elects to use these funds to carry out activities under the ESEA. However, there is no provision authorizing waiver of the local maintenance of effort requirement based on economic conditions or loss of local revenue.

##### Supplement Not Supplant

**Title I.** Title I-A, ESEA includes a supplement not supplant provision that applies both to state and local educational agencies. It provides that the agency shall use Title I-A funds only to supplement, and not supplant, the funds that would, in the absence of the Title I-A funds, be made available from non-federal sources for the education of pupils participating in Title I-A programs. Section 9401 of ESEA bars

waiving these provisions or similar supplement not supplant provisions for other ESEA programs under the Secretary's general waiver authority.

These provisions are often difficult to apply, and there has been little guidance on them from USED. The issue is what would have been spent (generally from state and local sources) for these students if there had been no Title I-A funds. Under federal compliance standards for state auditors published by OMB, a violation is presumed if federal funds replace state and local funds; if federal funds are used to meet a legal requirement to spend funds on these children or purposes; or if the state educational agency or LEA uses Title I-A funds to provide services for participating children that it provides with non-Title I-A funds for other children (the latter test is the clearest case of a supplement not supplant violation under Title I-A). However, these presumptions may be rebutted with evidence that funds would not have been spent for these purposes absent the federal funds; for example, due to program cuts caused by a state budgetary crisis.

**IDEA.** Supplement not supplant provisions under IDEA are generally more restrictive. At the state level, they provide that funds paid to the state under Part B must be used to supplement, and not to supplant, the level of federal, state, and local funds expended for special education and related services for children with disabilities. The only ground for waiver is if the state provides clear and convincing evidence that all children with disabilities in the state have available to them a free appropriate public education. USED has never granted a waiver on this basis. Unlike Title I, the fact that reductions in expenditures for special education may be caused by factors unrelated to the availability of federal funds is not a defense. IDEA-B also includes a separate supplement not supplant clause applicable at the LEA level, which USED generally has interpreted to mean that the local agency must maintain overall fiscal effort for special education and related services for children with disabilities. Similarly, IDEA-C includes a supplement not supplant clause that has been interpreted by USED to require state and local funds budgeted for early intervention services for infants and toddlers with disabilities to be maintained at least at the same level as the prior fiscal year.

### **Summary**

The applicability of maintenance of effort and supplement not supplant provisions to funding under the Recovery Act is somewhat complex. The Recovery Act provides some flexibility and relief regarding maintenance of effort requirements under the Act and under existing programs funded through the Act. That flexibility will need to be promptly implemented by the Secretary. The Act appears to provide no flexibility regarding most supplement not supplant provisions under current law. Those provisions as written in ESEA programs provide appropriate latitude for states and LEAs to make decisions on expenditure levels devoted to program purposes based on budgetary constraints – not based on the availability of federal funds – but that latitude is generally absent for IDEA-B provisions.

EducationCounsel LLC is available to provide guidance on these provisions. Please contact Steve Winnick at [steve.winnick@educationcounsel.com](mailto:steve.winnick@educationcounsel.com) or (202)545-2913 if you have questions.

# **Reporting Requirements**

## ***Section 1512 of ARRA***

### **The American Recovery and Reinvestment Act of 2009 (H.R. 1 and Public Law 111-5)**

**(reproduced by COGR as a reference for the COGR membership)**

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#### **Subtitle A – Transparency and Oversight Requirements.**

#### **SEC. 1512. REPORTS ON USE OF FUNDS.**

(a) **SHORT TITLE.**—This section may be cited as the “Jobs Accountability Act”.

(b) **DEFINITIONS.**—In this section:

(1) **RECIPIENT.**—The term “recipient”—

(A) means any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual; and

(B) includes a State that receives recovery funds.

(2) **RECOVERY FUNDS.**—The term “recovery funds” means any funds that are made available from appropriations made under this Act.

(c) **RECIPIENT REPORTS.**—Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

(1) the total amount of recovery funds received from that agency;

(2) the amount of recovery funds received that were expended or obligated to projects or activities; and

(3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—

(A) the name of the project or activity;

(B) a description of the project or activity;

(C) an evaluation of the completion status of the project or activity;

(D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(d) AGENCY REPORTS.—Not later than 30 days after the end of each calendar quarter, each agency that made recovery funds available to any recipient shall make the information in reports submitted under subsection (c) publicly available by posting the information on a website.

(e) OTHER REPORTS.—The Congressional Budget Office and the Government Accountability Office shall comment on the information described in subsection (c)(3)(D) for any reports submitted under subsection (c). Such comments shall be due within 45 days after such reports are submitted.

(f) COMPLIANCE.—Within 180 days of enactment, as a condition of receipt of funds under this Act, Federal agencies shall require any recipient of such funds to provide the information required under subsection (c).

(g) GUIDANCE.—Federal agencies, in coordination with the Director of the Office of Management and Budget, shall provide for user-friendly means for recipients of covered funds to meet the requirements of this section.

(h) REGISTRATION.—Funding recipients required to report information per subsection (c)(4) must register with the Central Contractor Registration database or complete other registration requirements as determined by the Director of the Office of Management and Budget.

## *Excerpt from OMB ARRA Guidance*

**p. 18 (Feb 18, 2009)**

### **2.9 What reporting will be collected from recipients of Federal funding for reporting on Recovery.gov?**

The Recovery Act and this guidance require extensive reporting from recipients of Federal funding. The Recovery Act defines "recipient" as any entity that receives Recovery Act funds directly from the Federal Government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act funds. See Section 1512 of the Recovery Act.

These requirements apply to:

- **Prime recipients.** **Reporting requirements only apply to the prime non-Federal recipients of Federal funding, and the subawards (i.e., subgrants, subcontracts, etc.) made by these prime recipients. They do not require each subsequent subrecipient to also report.** For instance, a grant could be given from the Federal government to State A, which then gives a subgrant to City B (within State A), which hires a contractor to construct a bridge, which then hires a subcontractor to supply the concrete. In this case, State A is the prime recipient, and would be required to report the subgrant to City B. However, City B does not have any specific reporting obligations, nor does the contractor or subcontractor for the purposes of reporting for the Recovery.gov website. All recipients of Federal funds must continue to comply with existing agency and program reporting requirements.
- **Only recipients receiving awards funded through discretionary appropriations.** These reporting requirements only apply to non-Federal recipients who receive funding provided through discretionary appropriations. The reporting requirements do not apply to funding received through entitlement or other mandatory programs, except as specifically required by OMB.

As required by Section 1512 of the Recovery Act and this guidance, each recipient, as described above, is **required to report the following information to the Federal agency providing the award 10 days after the end of each calendar quarter, starting on July 10th.**

These reports will include the following data elements, as prescribed by the Recovery Act:

- (1) The **total amount of recovery funds received** from that agency;
- (2) The **amount of recovery funds received that were obligated and expended to projects or activities.** This reporting will also include unobligated Allotment balances to facilitate reconciliations.
- (3) A **detailed list of all projects or activities for which recovery funds were obligated and expended**, including--
  - (A) The **name of the project or activity**;
  - (B) A **description of the project or activity**;
  - (C) An **evaluation of the completion status** of the project or activity;
  - (D) An **estimate of the number of jobs created and the number of jobs retained** by the project or activity; and

(E) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of OMB.

**The final guidance issued by OMB for the Recovery Act will lay out in more detail specific reporting instructions** and how the data collection for this reporting will work government-wide. OMB is actively pursuing options for collecting some of this information centrally, focusing first on the data required in (4) above in the standard formats currently used by Federal agencies to report to USASpending.gov. OMB is also actively considering how to centralize the collection and reporting of the information required in section (3) above, though the current preference is that, to the extent possible, this data should be collected and reported through existing program level systems. Agencies should develop initial contingency plans for collecting and reporting this information directly on the agency recovery website within the 30 days specified by law.

**Instructions for reporting this information will be provided in subsequent guidance.** Agencies should be cautious before making investments in new system capabilities before further guidance is issued or before consulting with OMB.

Regarding the reporting requirements in 3(d), usual methods for reporting jobs created by a contract do not take into account the time frame over which the jobs are created. As a result, they are likely to be inconsistent with macroeconomic estimates of jobs created at a point in time. For this reason, departments and agencies should use conventional jobs estimates for internal planning purposes only. Uniform reporting requirements for estimates of job creation will be specified at a later time.

Federal agencies must instruct recipients covered by these reporting requirements that **Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and this Guidance.**